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UNITED STATES DISTRICT COURT**DISTRICT OF NEVADA**

DANIEL DEAN BALLARD,

Plaintiff

v.

STATE OF NEVADA,

Defendant

Case No.: 3:21-cv-00498-MMD-WGC

**REPORT & RECOMMENDATION OF
U.S. MAGISTRATE JUDGE**

Re: ECF No. 1

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

On December 6, 2021, Plaintiff filed an application to proceed *in forma pauperis* (IFP) for an inmate on the United States District Court for the District of Nevada's (federal court) form. (ECF No. 1 at 1-3.) The financial certificate, however, appears to be made on a state court form. (*Id.* at 4.) Along with his IFP application, Plaintiff filed a motion requesting records or documents from the Eighth Judicial District Court in Las Vegas (state court) seeking court records, including pretrial motions and transcripts of any hearings, pretrial writs of habeas corpus and transcripts, any evidentiary hearings and transcripts, trial transcripts and any post-trial petitions or motions, and any habeas corpus or other post-conviction petitions and transcripts. (ECF Nos. 1-1, 1-2.) Next, Plaintiff filed an ex parte motion for appointment of counsel that is captioned for the United States District Court of the District of Nevada (federal court), but for which he includes a state court case number. (ECF No. 1-3.) Finally, Plaintiff filed a notice of

1 appeal of a judgment entered on February 8, 2014, that is captioned for state court. (ECF No. 1-
2 4.)

3 It appears that Plaintiff intended to file these documents related to a criminal appeal in
4 the Eighth Judicial District Court of the State of Nevada (state court), but mistakenly filed the
5 documents in federal court.

6 As such, the court should deny Plaintiff's IFP application (ECF No. 1) without prejudice
7 and administratively close this case so Plaintiff can file his documents in the correct court.

8 If it was Plaintiff's intent to file a federal habeas petition (after exhausting all applicable
9 state remedies), he may file an application to proceed IFP for an inmate along with the
10 appropriate habeas petition.

11 **RECOMMENDATION**


12 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING** Plaintiff's
13 IFP application (ECF No. 1) **WITHOUT PREJUDICE** and administratively close this case.

14 Plaintiff should be aware of the following:

15 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
16 this Report and Recommendation within fourteen days of being served with a copy of the Report
17 and Recommendation. These objections should be titled "Objections to Magistrate Judge's
18 Report and Recommendation" and should be accompanied by points and authorities for
19 consideration by the district judge.

1 2. That this Report and Recommendation is not an appealable order and that any notice of
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
3 until entry of judgment by the district court.

4 Dated: January 5, 2022

5 
6 William G. Cobb
7 United States Magistrate Judge
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